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IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

In re

No. 04-08822-PCW-11

THE CATHOLIC BISHOP OF  
SPOKANE a/k/a THE CATHOLIC  
DIOCESE OF SPOKANE, a Washington  
corporation sole,,

Debtor.

JOHN DOE, JAMES DOE and JOSEPH  
DOE (pseudonyms),

Plaintiffs,

Adv. Proc. No. 05-80004

v.

CATHOLIC ARCHBISHOP OF  
SEATTLE, a Washington non profit  
corporation; CATHOLIC BISHOP OF  
SPOKANE, a Washington non profit  
corporation; and PATRICK  
O'DONNELL, individually,

Defendants.

OBJECTION TO REMOVAL AND  
MOTION TO REMAND OR  
ABSTAIN AND MEMORANDUM  
THEREON

**[Demand for Jury Trial]**

COMES NOW Plaintiffs in the removed action herein object to the removal  
of this cause and move to remand or for this Court to Abstain.

**I. MOTION AND RULE 9027(e) STATEMENT.**

1.1 This is a non-core proceeding related to case under title 11.

OBJECTION TO REMOVAL AND MOTION TO  
REMAND OR ABSTAIN AND MEMORANDUM - 1

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1           1.2    This Court has jurisdiction to hear this motion under 28 U.S.C. §§  
2   157(a) and 1334.

3           1.3    This Motion is brought pursuant to 28 U.S.C. 1452(b), FRBP 9027(d)  
4   Related to remand and 28 U.S.C. 1334(c)(1) and or FRBP 5011, related to  
5   discretionary and mandatory abstention.

6           1.4    As to the allegations in Defendant's Notice of Removal, Plaintiffs  
7   state:

- 8                   a.    Admit paragraphs 1, 2, 5.  
9                   b.    Deny 4, 7 and object to the extent such allegation would imply  
10   that seeking withdrawal of the reference is not an option for the Plaintiffs.  
11                   c.    Is without knowledge to admit or deny 6.  
12                   d.    Allegation 8 does not require a response.

13           1.5    Plaintiffs do not consent to the entry of final orders or judgment by the  
14   bankruptcy court and assert their right to a jury trial in state court.

15           DATED this 18<sup>th</sup> day of January 2005.

16                                   FOSTER PEPPER & SHEFELMAN PLLC

17                                   *S/ Dillon E. Jackson*

18                                   \_\_\_\_\_  
19                                   Dillon E. Jackson, WSBA No. 1539  
20                                   Co-Counsel for Plaintiffs

1                   **MEMORANDUM IN SUPPORT OF OBJECTION TO REMOVAL AND**  
2                   **MOTION TO REMAND OR ABSTAIN**

3           Plaintiffs object to the removal of this cause and move for remand or  
4   abstention. Plaintiffs have also demanded a jury trial.

5                   **I.     INTRODUCTION**

6           1.1    Non-core.

7           This is a non-core proceeding related to case under title 11. See, 28 U.S.C.  
8   §§ 157(b)(2)(B) which expressly excludes liquidation or estimation of contingent or  
9   unliquidated personal injury tort or wrongful death claims against the estate under  
10   the definition of “core proceedings.” The essential facts supporting this claim are  
11   set forth in the Complaint in the state court action that is the subject of removal. In  
12   broad summary the claims herein are based upon claims of sexual abuse made  
13   against the Debtor and certain of its employees and/or priests. The claims are for  
14   personal injuries and/or wrongful death and are contingent and unliquidated. This  
15   is not a core action and plaintiffs have sought a jury trial and have objected to the  
16   entry of final orders or judgment by the bankruptcy court.

17          1.2    Can Efficiently Be Determined in State Court.

18          The cases herein have been pending for varying periods of time, but the  
19   claims can be adjudicated expeditiously in state court. See Declaration of Michael  
20   Pfau filed concurrently.

21                   **II. MANDATORY ABSTENTION**

22          Under the express language of 28 U.S.C. 1334(c)(2) this Court is required by  
23   law to abstain from hearing this case. Where there are non-debtor parties abstention  
24   is mandatory. See, *1 Collier on Bankruptcy* ¶ 3.06{4} (15<sup>th</sup> ed. Rev. 2003).

25          There is no bankruptcy jurisdiction over this case because the abstention  
26   provisions of 28 U.S.C. § 1334(c) qualify Section 1334(b)’s broad grant of

jurisdiction.” *In re Dow Corning Corp.*, 86 F.3d 482, 497 (6<sup>th</sup> Cir 1996), *cert denied* 519 U.S. 1071 (1997).

### III. DISCRETIONARY ABSTENTION

The court has discretion to remand removed cause of action under 28 U.S.C. 1452(b) on “any equitable ground.” See also consistent language in 28 U.S.C. 1334(c)(1). Factors for discretionary remand or abstention are set out in *In re Tucson Estates* 912 F.2d 1162, 1167( 9<sup>th</sup> Cir. 1990). Of particular application are the following “Tucson factors.”

#### 3.1 Factor 1—Efficient Administration.

It cannot be seriously argued that the Bankruptcy can more effectively administer these claims were it is unable to enter a final judgment and can only entertain a jury trial on the specific stipulation of the parties. Arguably Jury trials would, of necessity proceed in the United States District Court. This would not promote efficient administration of the estate.

#### 3.2 Factor 2--State Law Issues Predominate.

This factor is clearly applicable in personal injury and wrongful death cases. There are no federal law issues presented, while issues relating to statute of limitations, *respondent superior* and similar state law issues are addressed in many of these cases.

#### 3.3 Factor 4--Presence of Related Proceeding in State Court.

The state court action is filed and was proceeding at the time of the removal.

#### 3.4 Factor 5--Lack of Federal Jurisdiction.

Absent § 1334 this court would have no jurisdiction over the parties and subject matter of this case.

1           3.5    Factor 8--Feasibility of Severing Claims Determination from  
2 Enforcement.

3           Clearly this is feasible in this situation, since once the claims are determined  
4 by a state court jury, the bankruptcy court would address how claims are to be paid.

5           3.6    Factor 10--Forum Shopping.

6           There can be no misunderstanding that the Debtor has removed these cases to  
7 gain advantage in litigation and to attempt to deprive Plaintiffs of their right to a  
8 jury trial.

9           3.7    Factor 11—Right to a Jury Trial.

10          The plaintiffs clearly have a right to a jury trial under applicable law. *See*, 28  
11 U.S.C. 1411.

12          3.8    Factor 12—Non Debtor Parties.

13          In each case, there are or may be, non-debtor defendant parties.

14          3.9    Summary.

15          The remaining factors also favor remand or abstention or at the very least are  
16 neutral in their application.

17          3.10   Ninth Circuit Policy.

18          The 9<sup>th</sup> Circuit has stated that there is a clear policy to be followed to give  
19 state court litigants the right to have claims heard in state court. *In re Castlerock*  
20 *Properties* , 781 F.2d 159, 163 (9<sup>th</sup> Cir. 1986).

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1 **IV. CONCLUSION**

2 For all the foregoing reasons the Plaintiffs in this cause urge the Court to  
3 remand this matter to state court or abstain.

4 DATED this 18<sup>th</sup> day of January 2005.

5 FOSTER PEPPER & SHEFELMAN PLLC

6 *S/ Dillon E. Jackson*

7  
8 Dillon E. Jackson, WSBA No. 1539  
9 Co-Counsel for Plaintiffs